

The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNILOC 2017 LLC  
Plaintiff,

v.

HTC AMERICA, INC.  
Defendant.

Case No. 2:18-cv-01732-RSM

**STIPULATED PROTECTIVE ORDER  
REGARDING THE DISCLOSURE AND  
USE OF DISCOVERY MATERIALS**

WHEREAS Plaintiff Uniloc 2017 (“Uniloc”) and Defendant HTC America, Inc. (“HTC” or “Defendant”) anticipate that documents, testimony, or information containing or reflecting confidential, proprietary, trade secret, and/or commercially sensitive information are likely to be disclosed or produced during the course of discovery, initial disclosures, and supplemental disclosures in the above-captioned case (“the Case”), *see* Dkt. # 30 (Joint Status Report), the Parties request that the Court enter this Order setting forth the conditions for treating, obtaining, and using such information. This Order is consistent with the Local Rules in that “it does not purport to confer blanket protection on all disclosures or responses to discovery, its protection from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it

1 does not presumptively entitle the parties to file confidential information under seal.” Local  
 2 Rules W.D. Wash. LCR 26(c). The Parties have previously agreed and are subject to protective  
 3 orders with substantially similar terms as those contained herein in patent lawsuits in this district  
 4 and another district. *See Uniloc USA, Inc., et al. v. HTC America, Inc.*, Case No. 2:17-cv-1558-  
 5 JLR, Dkt. #59 (W.D. Wash.); *Uniloc USA, Inc., et al. v. HTC America, Inc.*, Case No. 2:16-cv-  
 6 989-JRG, *consolidated at Uniloc USA, Inc. v. Motorola Mobility LLC*, Case No. 2:16-cv-992-  
 7 JRG, Dkt. No. 131 (E.D. Tex.) (stayed pending *inter partes* review).

8 Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, the Court finds good  
 9 cause for the following Agreed Protective Order Regarding the Disclosure and Use of  
 10 Discovery Materials (“Order” or “Protective Order”).

11 1. **PURPOSES AND LIMITATIONS**

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 13 (a) Protected Material designated under the terms of this Protective Order shall  
 14 be used by a Receiving Party solely for the Case, and shall not be used directly or indirectly for  
 15 any other purpose whatsoever.

16 (b) The Parties acknowledge that this Order does not confer blanket protections  
 17 on all disclosures during discovery, or in the course of making initial or supplemental  
 18 disclosures under Rule 26(a). Designations under this Order shall be made with care and shall  
 19 not be made absent a good faith belief that the designated material satisfies the criteria set forth  
 20 below. If it comes to a Producing Party’s attention that designated material does not qualify for  
 21 protection at all, or does not qualify for the level of protection initially asserted, the Producing  
 22 Party must promptly notify all other Parties that it is withdrawing or changing the designation.

23 2. **DEFINITIONS**

24 (a) “Discovery Material” means all items or information, including from any  
 25 non-party, regardless of the medium or manner generated, stored, or maintained (including,  
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1 among other things, testimony, transcripts, or tangible things) that are produced, disclosed, or  
2 generated in connection with discovery or Rule 26(a) disclosures in the Case.

3 (b) "Outside Counsel" means (i) outside counsel who appear on the pleadings  
4 as counsel for a Party and (ii) partners, associates, and staff of such counsel to whom it is  
5 reasonably necessary to disclose the information for this litigation.

6 (c) "In-house Counsel" means attorneys who are employees of a Party and are  
7 working on this litigation, and includes supporting personnel employed by those counsel, such  
8 as paralegals, but specifically excludes any inventor of a patent-in-suit. For a Party that does  
9 not employ any attorneys, In-house Counsel shall include one non-attorney individual working  
10 on this litigation as an employee as that Party, but specifically excludes any inventor of a patent-  
11 in-suit.

12 (d) "Patent-in-suit" means U.S. Patent No. 6,836,654 and any other patent  
13 asserted in the Case.

14 (e) "Party" means any party to the Case, including all of its officers, directors,  
15 employees, consultants, retained experts, and Outside Counsel and their support staff.

16 (f) "Producing Party" means any Party or non-party that discloses or produces  
17 any Discovery Material in the Case.

18 (g) "Protected Material" means any Discovery Material that is designated as  
19 "CONFIDENTIAL," "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY," or  
20 "HIGHLY CONFIDENTIAL - SOURCE CODE," as provided for in this Order. Protected  
21 Material shall not include: (i) advertising materials that have been actually published or publicly  
22 disseminated; and (ii) materials that show on their face they have been disseminated to the  
23 public.

24 (h) "Receiving Party" means any Party who receives Discovery Material from  
25 a Producing Party.

1 (i) "Source Code" means a text listing of computer instructions, commands and  
2 data definitions expressed in a form suitable for input to an assembler, compiler, or other  
3 translator to be compiled or assembled into an executable computer program.

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5 3. **COMPUTATION OF TIME**

6 The computation of any period of time prescribed or allowed by this Order shall be  
7 governed by the provisions for computing time set forth in Federal Rule of Civil Procedure 6.

8 4. **SCOPE**

9 (a) The protections conferred by this Order cover not only Discovery Material  
10 governed by this Order as addressed herein, but also any information copied or extracted  
11 therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus testimony,  
12 conversations, or presentations by Parties or their counsel in Court or in other settings that might  
13 reveal Protected Material.

14 (b) Nothing in this Protective Order shall prevent or restrict a Producing Party's  
15 own disclosure or use of its own Protected Material for any purpose, and nothing in this Order  
16 shall preclude any Producing Party from showing its Protected Material to an individual who  
17 prepared the Protected Material.

18 (c) Nothing in this Order shall be construed to prejudice any Party's right to  
19 use any Protected Material in Court or in any Court filing with the consent of the Producing  
20 Party or by order of the Court.

21 (d) This Order is without prejudice to the right of any Party to seek further or  
22 additional protection of any Discovery Material or to modify this Order in any way, including,  
23 without limitation, an order that certain matter not be produced at all.  
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1        5.        **DURATION**

2                Even after the termination of the Case, the confidentiality obligations imposed by this  
3 Order shall remain in effect until a Producing Party agrees otherwise in writing or a Court order  
4 otherwise directs.

5        6.        **ACCESS TO AND USE OF PROTECTED MATERIAL**

7                (a) Basic Principles. All Protected Material shall be used solely for the Case  
8 or any related appellate proceeding, and not for any other purpose whatsoever, including  
9 without limitation any other litigation, patent prosecution or acquisition, patent reexamination,  
10 reissue, *inter partes* review, covered business method review, or other post-grant review  
11 proceedings, or any business or competitive purpose or function. Protected Material shall not  
12 be distributed, disclosed or made available to anyone except as expressly provided in this Order.

13                (b) Patent Prosecution Bar. Absent the written consent of the Producing Party,  
14 any person employed by, related to, or representing the Receiving Party who is permitted to and  
15 in fact receives any of the Producing Party's materials designated "HIGHLY CONFIDENTIAL  
16 – ATTORNEY'S EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" and  
17 directed to technical information relevant to the Case, but excluding financial data or non-  
18 technical business information (collectively, "HIGHLY SENSITIVE TECHNICAL  
19 MATERIAL"), in accordance with this Order, shall not, on behalf of the Receiving Party or  
20 their acquirer, successor, predecessor, or other affiliate, prepare, prosecute, or assist in the  
21 preparation or prosecution of any patent application relating to the subject matter of the Patent-  
22 in-suit and corresponding to the produced technical information, i.e., anti-theft protection for a  
23 radiotelephony device, before any foreign or domestic agency, including the United States  
24 Patent and Trademark Office. To ensure compliance with the purpose of this provision, each  
25 Party shall create an "Ethical Wall" between those persons with access to HIGHLY  
26 SENSITIVE TECHNICAL MATERIAL in accordance with this Order, and any individuals

1 who, on behalf of Plaintiff or their acquirer, successor, predecessor, or other affiliate, prepare,  
2 supervise, or assist in the preparation or prosecution of any patent application relating to the  
3 accused functionalities as stated above. These prohibitions shall not preclude the Receiving  
4 Party's litigation counsel from participating in any *inter partes* review proceedings. However,  
5 if and when claim amendments are considered in such an *inter partes* review, the Receiving  
6 Party's litigation counsel participating in that *inter partes* review must at that time either end  
7 their involvement in that *inter partes* proceeding or request leave of court to continue their  
8 participation in that proceeding. Litigation counsel who are the subject of such a request shall  
9 not provide input on any proposed claim amendments while the motion for leave is pending,  
10 and the Producing Party will agree to reasonable measures to expedite consideration of that  
11 motion (such as an expedited briefing schedule that allows for at least one week for the filing  
12 of an opposition). If leave of court is granted, then the Receiving Party's litigation counsel may  
13 continue to represent the Receiving Party in the litigation and the *inter partes* proceeding at  
14 issue, even though amendments are considered. If leave is denied, then those counsel with  
15 access to HIGHLY SENSITIVE TECHNICAL MATERIALS shall withdraw from  
16 representation in, and shall not provide any input concerning, that *inter partes* review. The  
17 prohibitions of this paragraph shall begin when the HIGHLY SENSITIVE TECHNICAL  
18 MATERIALS are first received by the affected individual, and shall end one year after the  
19 settlement and/or dismissal of the Producing Party Defendant from this Case or the final non-  
20 appealable termination of this Case.

21 (c) Patent Acquisition Bar. Absent the written consent of the Producing Party,  
22 any person employed by, related to, or representing the Receiving Party who is permitted to and  
23 in fact receives any of the Producing Party's HIGHLY SENSITIVE TECHNICAL MATERIAL  
24 in accordance with this Order, shall not advise, counsel, participate, or assist in the acquisition  
25 of any patents or patent applications that (1) relate to the subject matter of the Patent-in-suit; or  
26 (2) relate to the subject matter of the HIGHLY SENSITIVE TECHNICAL MATERIAL that  
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1 such individual reviewed. For the avoidance of doubt, the “acquisition” of patents under this  
2 section includes any analysis or evaluation of patents for the purposes of evaluating whether,  
3 or for what price, to acquire them. These prohibitions shall begin when the HIGHLY  
4 SENSITIVE TECHNICAL MATERIALS are first received by the affected individual, and shall  
5 end one year after the settlement or dismissal of the Producing Party from this Case or the final  
6 non-appealable termination of this Case.

7 (d) Secure Storage, No Export. Protected Material must be stored and  
8 maintained by a Receiving Party at a location in the United States and in a secure manner that  
9 ensures that access is limited to the persons authorized under this Order. Materials designated  
10 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY  
11 CONFIDENTIAL – SOURCE CODE” produced by Defendant shall not be taken or reviewed  
12 outside the United States unless expressly agreed to in writing by the Producing Party. If a  
13 deposition of a Producing Party’s employee or 30(b)(6) designee occurs outside the United  
14 States, that Producing Party’s Protected Materials may be taken outside the United States solely  
15 for purposes of their use at that deposition. Any materials designated “HIGHLY  
16 CONFIDENTIAL – SOURCE CODE” are subject to the restrictions in Section 10.

17 (e) Legal Advice Based on Protected Material. Nothing in this Protective Order  
18 shall be construed to prevent counsel from advising their clients with respect to the Case based  
19 in whole or in part upon Protected Materials, provided counsel does not disclose the Protected  
20 Material itself except as provided in this Order.

21 (f) Limitations. Nothing in this Order shall restrict in any way a Producing  
22 Party’s use or disclosure of its own Protected Material. Nothing in this Order shall restrict in  
23 any way the use or disclosure of Discovery Material by a Receiving Party: (i) that is or has  
24 become publicly known through no fault of the Receiving Party; (ii) that is lawfully acquired  
25 by or known to the Receiving Party independent of the Producing Party; (iii) previously  
26 produced, disclosed and/or provided by the Producing Party to the Receiving Party or a non-  
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1 party without an obligation of confidentiality and not by inadvertence or mistake; (iv) with the  
 2 consent of the Producing Party; or (v) pursuant to order of the Court. However, if the accuracy  
 3 of information is confirmed only through the review of Protected Material, then the information  
 4 shall not be considered to be publicly known. For example, unsubstantiated media speculations  
 5 or rumors that are later confirmed to be accurate through access to Protected Material are not  
 6 “publicly known” information. Such information is explicitly included in the definition of  
 7 “Protected Material” set forth in paragraph 2(g) above.

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 9 **7. DESIGNATING PROTECTED MATERIAL**

10 (a) Available Designations. Any Producing Party may designate Discovery  
 11 Material with any of the following designations, provided that it meets the requirements for  
 12 such designations as provided for herein: “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL –  
 13 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE.”

14 (b) Written Discovery and Documents and Tangible Things. Written  
 15 discovery, documents (which include “electronically stored information,” as that phrase is used  
 16 in Federal Rule of Civil Procedure 34), and tangible things that meet the requirements for the  
 17 confidentiality designations listed in paragraph 7(a) may be so designated by placing the  
 18 appropriate designation on every page of the written material prior to production. For digital  
 19 files being produced, the Producing Party may mark each viewable page or image with the  
 20 appropriate designation, and mark the medium, container, and/or communication in which the  
 21 digital files were contained. In the event that original documents are produced for inspection,  
 22 the original documents shall be presumed “HIGHLY CONFIDENTIAL – ATTORNEYS’  
 23 EYES ONLY” during the inspection and re-designated, as appropriate during the copying  
 24 process.

25 (c) Native Files. Where electronic files and documents are produced in native  
 26 electronic format, such electronic files and documents shall be designated for protection under



1 this Order by appending to the file names or designators information indicating whether the file  
2 contains “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
3 or “HIGHLY CONFIDENTIAL – SOURCE CODE,” material, or shall use any other  
4 reasonable method for so designating Protected Materials produced in electronic format. When  
5 electronic files or documents are printed for use at deposition, in a Court proceeding, or for  
6 provision in printed form to an expert or consultant pre-approved pursuant to paragraph 9, the  
7 Party printing the electronic files or documents shall affix a legend to the printed document  
8 corresponding to the designation of the Designating Party and including the production number  
9 and designation associated with the native file. No one shall seek to use in this litigation a .tiff,  
10 .pdf, or other image format version of a document produced in native file format without first  
11 (1) providing a copy of the image format version to the Producing Party so that the Producing  
12 Party can review the image to ensure that no information has been altered, and (2) obtaining the  
13 consent of the Producing Party, which consent shall not be unreasonably withheld.

14 (d) Depositions and Testimony. Parties or testifying persons or entities may  
15 designate depositions and other testimony with the appropriate designation by indicating on the  
16 record at the time the testimony is given or by sending written notice of how portions of the  
17 transcript of the testimony is designated within thirty days of receipt of the transcript of the  
18 testimony. If no indication on the record is made, all information disclosed during a deposition  
19 shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” until the time  
20 within which it may be appropriately designated as provided for herein has passed. Any  
21 Protected Material that is used in the taking of a deposition shall remain subject to the provisions  
22 of this Protective Order. In such cases the court reporter shall be informed of this Protective  
23 Order and shall be required to operate in a manner consistent with this Protective Order. In the  
24 event the deposition is videotaped, the original and all copies of the videotape shall be marked  
25 by the video technician to indicate that the contents of the videotape are subject to this Protective  
26 Order, substantially along the lines of “This videotape contains confidential testimony used in  
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1 this case and is not to be viewed or the contents thereof to be displayed or revealed except  
 2 pursuant to the terms of the operative Protective Order in this matter or pursuant to written  
 3 stipulation of the parties.” Counsel for any Producing Party shall have the right to exclude from  
 4 oral depositions, other than the deponent, deponent’s counsel, the reporter and videographer (if  
 5 any), any person who is not authorized by this Protective Order to receive or access Protected  
 6 Material based on the designation of such Protected Material. Such right of exclusion shall be  
 7 applicable only during periods of examination or testimony regarding such Protected Material.

8 **8. DISCOVERY MATERIAL DESIGNATED AS “CONFIDENTIAL”**

9 (a) A Producing Party may designate Discovery Material as  
 10 “CONFIDENTIAL” if it contains or reflects confidential, proprietary, and/or commercially  
 11 sensitive information.  
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13 (b) Unless otherwise ordered by the Court, Discovery Material  
 14 designated as “CONFIDENTIAL” may be disclosed only to the following:  
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16 (i) The Receiving Party’s Outside Counsel, such counsel’s immediate  
 17 paralegals and staff, and any copying or clerical litigation support services working at the  
 18 direction of such counsel, paralegals, and staff;

19 (ii) Not more than three representatives of the Receiving Party, who  
 20 may be, but need not be, In-house Counsel for the Receiving Party, as well as their immediate  
 21 paralegals and staff, to whom disclosure is reasonably necessary for the Case, provided that  
 22 each such person has agreed to be bound by the provisions of the Protective Order by signing a  
 23 copy of Exhibit A;

24 (iii) Any outside expert or consultant retained by the Receiving Party to  
 25 assist in the Case, provided that disclosure is only to the extent necessary to perform such work;  
 26 and provided that: (a) such expert or consultant has agreed to be bound by the provisions of the  
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1 Protective Order by signing a copy of Exhibit A; (b) such expert or consultant is not a current  
2 officer, director, or employee of a Party or of a competitor of a Party, nor anticipated at the time  
3 of retention to become an officer, director, or employee of a Party or of a competitor of a Party;  
4 (c) such expert or consultant accesses the materials in the United States only, and does not  
5 transport them to or access them from any foreign jurisdiction, except that, for example, an  
6 expert or consultant may transport Protected Material outside of the United States for the  
7 purpose of providing support to outside counsel of a party deposing employees of another party  
8 or a third party resident overseas; and (d) no unresolved objections to such disclosure exist after  
9 proper notice has been given to all Parties as set forth in Section 12 below. If an unresolved  
10 objection to such disclosures exists, the Parties agree to promptly confer and use good faith to  
11 resolve any such objection;

12 (iv) Court reporters, stenographers, and videographers retained to record  
13 testimony taken in the Case;

14 (v) The Court, jury, and Court personnel;

15 (vi) Graphics, translation, design, and/or trial consulting personnel,  
16 having first agreed to be bound by the provisions of the Protective Order by signing a copy of  
17 Exhibit A;

18 (vii) Mock jurors who have signed an undertaking or agreement agreeing  
19 not to publicly disclose Protected Material and to keep any information concerning Protected  
20 Material confidential;

21 (viii) Any mediator who is assigned to hear this matter and his or her staff,  
22 subject to their agreement to maintain confidentiality to the same degree as required by this  
23 Protective Order; and

24 (ix) Any other person with the prior written consent of the Producing  
25 Party.

1           9.       **DISCOVERY MATERIAL DESIGNATED AS “HIGHLY**  
2                   **CONFIDENTIAL - ATTORNEYS’ EYES ONLY”**

3                   (a) A Producing Party may designate Discovery Material as “HIGHLY  
4 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” if it contains or reflects information that is  
5 extremely confidential and/or sensitive in nature and the Producing Party reasonably believes  
6 that the disclosure of such Discovery Material is likely to cause economic harm or significant  
7 competitive disadvantage to the Producing Party. The Parties agree that the following  
8 information, if non-public, shall be presumed to merit the “HIGHLY CONFIDENTIAL –  
9 ATTORNEYS’ EYES ONLY” designation: trade secrets, pricing information, financial data,  
10 sales information, sales or marketing forecasts or plans, business plans, sales or marketing  
11 strategy, product development information, engineering documents, testing documents,  
12 employee information, and other non-public information of similar competitive and business  
13 sensitivity.

14                   (b) Unless otherwise ordered by the Court, Discovery Material designated as  
15 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” may be disclosed only to:

16                               (i) The Receiving Party’s Outside Counsel, provided that such Outside  
17 Counsel is not involved in competitive decision-making, on behalf of a Party or a competitor of  
18 a Party, and such Outside Counsel’s immediate paralegals and staff, and any copying or clerical  
19 litigation support services working at the direction of such counsel, paralegals, and staff; and

20                               (ii) The individuals listed in paragraphs 8(b)(iii)-8(b)(ix).

21           10.       **DISCOVERY MATERIAL DESIGNATED AS “HIGHLY**  
22                   **CONFIDENTIAL - SOURCE CODE”**

23                   (a) To the extent production of Source Code becomes necessary to the  
24 prosecution or defense of the Case, a Producing Party may designate Source Code as “HIGHLY  
25 CONFIDENTIAL – SOURCE CODE” if it comprises or includes confidential, proprietary,  
26 and/or trade secret Source Code.

(b) Nothing in this Order shall be construed as a representation or admission that Source Code is properly discoverable in the Case, or to obligate any Party to produce any Source Code.

(c) Unless otherwise ordered by the Court, Discovery Material designated as “HIGHLY CONFIDENTIAL – SOURCE CODE” shall be subject to the provisions set forth in Section 11 below, and may be disclosed, subject to Section 11 below, solely to:

(i) The Receiving Party’s Outside Counsel, provided that such Outside Counsel is not involved in competitive decision-making, on behalf of a Party or a competitor of a Party, and such Outside Counsel’s immediate paralegals and staff, and any copying or clerical litigation support services working at the direction of such counsel, paralegals, and staff; and

(ii) The individuals listed in paragraphs 8(b)(iii-vi and viii-ix).

#### 11. **DISCLOSURE AND REVIEW OF SOURCE CODE**

For Protected Material designated HIGHLY CONFIDENTIAL SOURCE CODE, the following additional restrictions apply:

(a) Access to a Party’s HIGHLY CONFIDENTIAL SOURCE CODE shall be provided only on “stand-alone” computer(s) (that is, the computer may not be linked to any network, including a local area network (“LAN”), an intranet or the Internet). The stand-alone computer(s) may be connected to a printer solely for the limited purposes permitted pursuant to paragraphs 11(h) and 11(k) below. Additionally, the stand-alone computer(s) may only be located at the offices of the Producing Party’s outside counsel or other, mutually agreeable location;

(b) Prior to the first inspection of any requested Source Code, the parties agree to meet and confer regarding the review and production of Source Code if requested by either Party. Further, the Receiving Party shall provide ten days’ notice for its initial review of any

1 Source Code that it wishes to inspect. The Receiving Party shall provide two days' notice prior  
2 to any additional inspections.

3 (c) The Receiving Party shall make reasonable efforts to restrict its requests for  
4 such access to the stand-alone computer(s) to normal business hours, which for purposes of this  
5 paragraph shall be 8:00 a.m. through 6:00 p.m. The Parties agree to cooperate in good faith  
6 regarding accommodating review of a Party's HIGHLY CONFIDENTIAL SOURCE CODE;

7 (d) The Producing Party shall provide the Receiving Party with information  
8 explaining how to start, log on to, and operate the stand-alone computer(s) in order to access  
9 the produced HIGHLY CONFIDENTIAL SOURCE CODE on the stand-alone computer(s);

10 (e) The producing Party will produce Source Code Material in computer  
11 searchable format on the stand-alone computer(s) as described above;

12 (f) Access to Protected Material designated HIGHLY CONFIDENTIAL  
13 SOURCE CODE shall be limited to outside counsel and up to three outside consultants or  
14 experts (i.e., not existing employees or affiliates of a Party or an affiliate of a Party) retained  
15 for the purpose of this litigation and approved to access such Protected Materials pursuant to  
16 paragraph 8(b)(iii) above. A Receiving Party may if necessary include excerpts of HIGHLY  
17 CONFIDENTIAL SOURCE CODE in a pleading, exhibit, expert report, discovery document,  
18 deposition transcript, other Court document, provided that any such documents are  
19 appropriately marked as containing HIGHLY CONFIDENTIAL SOURCE CODE under this  
20 Order, restricted to those who are entitled to have access to them as specified herein, and, if  
21 filed with the Court, filed under seal in accordance with the Court's rules, procedures and  
22 orders;

23 (g) No electronic copies of HIGHLY CONFIDENTIAL SOURCE CODE shall  
24 be made without prior written consent of the Producing Party, except as necessary to create  
25 documents which, pursuant to the Court's rules, procedures and order, must be filed or served  
26 electronically;

1 (h) The Receiving Party shall be permitted to make a reasonable number of  
2 printouts and photocopies of Source Code Material, all of which shall be designated and clearly  
3 labeled "RESTRICTED CONFIDENTIAL SOURCE CODE," and the Receiving Party shall  
4 maintain a log of all such files that are printed or photocopied. Requests for paper copies that  
5 exceed 50 consecutive pages, or that cumulatively exceed 500 pages, shall be presumed to be  
6 unreasonable, absent express permission of the Producing Party. However, if the Producing  
7 Party objects to a request that exceeds such limits, the parties may seek the assistance of the  
8 Court to determine whether the request is reasonable.

9 (i) The Producing Party shall number, copy, and label "HIGHLY  
10 CONFIDENTIAL – SOURCE CODE" any pages requested by the Receiving Party. Within  
11 three (3) business days, the Producing Party shall either (i) provide one copy set of such pages  
12 to the Receiving Party, or (ii) inform the Requesting Party that it objects that the printed portions  
13 are excessive and/or not done for a permitted purpose. If, after meeting and conferring within  
14 one business day of any objections, the Producing Party and the Receiving Party cannot resolve  
15 the objection, the Producing Party shall within seven days of the meet and confer move the  
16 Court for a Protective Order and shall agree to expedited briefing of the motion, failing any of  
17 which, the Producing Party shall provide one copy set of the requested pages to the Receiving  
18 Party within two days.<sup>1</sup> The printed pages shall constitute part of the Source Code produced by  
19 the Producing Party in the Case.  
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22 <sup>1</sup> Both Parties agree that the briefing period and page-limits for such motions for a protective  
23 order shall be as follows: ( 1) Producing Party shall file the motion by 5 PM EST no later than  
24 seven days after the meet and confer with an agreed motion for expedited briefing as set forth  
25 herein; (2) Receiving Party's Response shall fall due within seven days. Both the Producing  
26 and Receiving Party further agree that briefing for such motions shall be limited to no more  
than five pages for the motion and five pages for the response to the motion. The parties further  
agree that neither reply nor sur-reply briefs shall be filed in connection with such motions.

1 (j) No copies of all or any portion of the Source Code may leave the room in  
2 which the Source Code is inspected except as otherwise provided herein. Further, no other  
3 written or electronic record of the Source Code is permitted except as otherwise provided herein.  
4 Upon written request at least five business days in advance, the Producing Party shall make the  
5 Source Code available for use at depositions.

6 (k) If the Receiving Party's outside counsel, consultants, or experts obtain  
7 printouts or photocopies of HIGHLY CONFIDENTIAL – SOURCE CODE, the Receiving  
8 Party shall ensure that such outside counsel, consultants, or experts keep the printouts or  
9 photocopies in a secured locked area in the offices of such outside counsel, consultants, or  
10 expert. The Receiving Party may also temporarily keep the printouts or photocopies at: (i) the  
11 Court for any proceedings(s) relating to the HIGHLY CONFIDENTIAL – SOURCE CODE,  
12 for the dates associated with the proceeding(s); (ii) the sites where any deposition(s) relating to  
13 the HIGHLY CONFIDENTIAL – SOURCE CODE are taken, for the dates associated with the  
14 deposition(s); and (iii) any intermediate location reasonably necessary to transport the printouts  
15 or photocopies (e.g., a hotel prior to a Court proceeding or deposition), provided that the  
16 printouts or photocopies are kept in a secure manner that ensures access is limited to the persons  
17 authorized under this Order; and

18 (l) A Producing Party's HIGHLY CONFIDENTIAL – SOURCE CODE may  
19 only be transported by the Receiving Party by a person authorized under paragraph 11(f) above  
20 to another person authorized under paragraph 11(f) above, on paper or removable electronic  
21 media (e.g., a DVD, CD-ROM, or flash memory "stick") via hand carry, Federal Express or  
22 other similarly reliable courier. HIGHLY CONFIDENTIAL -SOURCE CODE may not be  
23 transported or transmitted electronically over a network of any kind, including a LAN, an  
24 intranet, or the Internet. Source Code Material may only be transported electronically for the  
25 purpose of Court proceeding(s) or deposition(s) as set forth in paragraph 11(f) above and is at  
26



1 all times subject to the transport restrictions set forth herein. But, for those purposes only, the  
2 Source Code Materials may be loaded onto a stand-alone computer.

3 (m) The Receiving Party's outside counsel and/or experts shall be entitled to  
4 take notes relating to the Source Code but may not copy or transcribe the Source Code into the  
5 notes. The Receiving Party's expert(s) and/or consultant may use a single computer in the  
6 review room for the sole purpose of taking and reviewing his or her notes. Further, the computer  
7 shall be non-networked, shall not be connected to the Internet, shall have no camera apparatus,  
8 and shall have all input/output connections disabled while taking notes or when present in the  
9 Source Code review room. The taking of photographs or video shall not be permitted in the  
10 Source Code review room.

11 (n) No recordable media or recordable devices, including without limitation  
12 sound recorders, personal digital assistants (PDAs), cellular telephones, peripheral equipment,  
13 cameras, voice recorders, Dictaphones, telephone jacks, CDs, DVDs, or drives of any kind (e.g.,  
14 USB memory sticks and portable hard drives), shall be permitted into the Source Code review  
15 room. No non-electronic devices capable of similar functionality shall be permitted in the  
16 Source Code review room.

17 (o) The stand-alone computers shall, at the Receiving Party's request, include  
18 reasonable analysis tools for the type of Source Code Material. The Receiving Party shall be  
19 responsible for identifying the tools or licenses to the tools that it wishes to use so that the  
20 producing Party may install such tools on the stand-alone computers.

21 12. **NOTICE OF DISCLOSURE**  
22

23 (a) Prior to disclosing any Protected Material to any person described in  
24 paragraph 8(b)(iii) (referenced below as "Person"), the Party seeking to disclose such  
25 information shall provide the Producing Party with written notice that includes:

26 (i) the name of the Person;

1 (ii) an up-to-date curriculum vitae of the Person;

2 (iii) the present employer and title of the Person;

3 (iv) an identification of all of the Person's past and current employment  
4 and consulting relationships for the past five years, including direct relationships and  
5 relationships through entities owned or controlled by the Person;

6 (vi) a list of the cases in which the Person has testified at deposition or  
7 trial within the last five years; and

8 (v) an identification of all pending patent applications on which the  
9 Person is named as an inventor, or in which the Person has any ownership interest.

10 Further, the Party seeking to disclose Protected Material shall provide such other  
11 information regarding the Person's professional activities reasonably requested by the  
12 Producing Party for it to evaluate whether good cause exists to object to the disclosure of  
13 Protected Material to the outside expert or consultant.

14 (b) Within ten days of receipt of the disclosure of the Person, the Producing  
15 Party or Parties may object in writing to the Person for good cause. In the absence of an  
16 objection at the end of the ten day period, the Person shall be deemed approved under this  
17 Protective Order. There shall be no disclosure of Protected Material to the Person prior to  
18 expiration of this ten day period. If the Producing Party objects to disclosure to the Person  
19 within such ten day period, the Parties shall meet and confer via telephone or in person within  
20 seven days following the objection and attempt in good faith to resolve the dispute on an  
21 informal basis. If the dispute is not resolved, the Party objecting to the disclosure will have  
22 seven days from the date of the meet and confer to seek relief from the Court. If relief is not  
23 sought from the Court within that time, the objection shall be deemed withdrawn. If relief is  
24 sought, designated materials shall not be disclosed to the Person in question until the Court  
25 resolves the objection.

1 (c) For purposes of this section, “good cause” shall include an objectively  
2 reasonable concern that the Person will use or disclose Discovery Materials in a way or ways  
3 that would violate one or more provisions contained in this Order.

4 (d) Prior to receiving any Protected Material under this Order, the Person must  
5 execute a copy of the “Agreement to Be Bound by Protective Order” (Exhibit A hereto) and  
6 serve it on all Parties.

7 (e) An initial failure to object to a Person under this Section 12 shall not  
8 preclude the non-objecting Party from later objecting to continued access by that Person for  
9 good cause. However, a late objection to a Person cannot be made on the basis of information  
10 initially disclosed pursuant to 12(a) of this Section, except to the extent that said disclosure  
11 contained a material omission or misrepresentation. If an objection is made, the Parties shall  
12 meet and confer via telephone or in person within three days following the objection and attempt  
13 in good faith to resolve the dispute informally. If the dispute is not resolved, the Party objecting  
14 to the disclosure will have three days from the date of the meet and confer to seek relief from  
15 the Court. The designated Person may continue to have access to information that was provided  
16 to such Person prior to the date of the objection. If a later objection is made, no further Protected  
17 Material shall be disclosed to the Person until the Court resolves the matter or the Producing  
18 Party withdraws its objection. Notwithstanding the foregoing, if the Producing Party fails to  
19 move for a protective order within three days after the meet and confer, further Protected  
20 Material may thereafter be provided to the Person.

21 13. **CHALLENGING DESIGNATIONS OF PROTECTED MATERIAL**

22  
23 (a) A Party shall not be obligated to challenge the propriety of any designation  
24 of Discovery Material under this Order at the time the designation is made, and a failure to do  
25 so shall not preclude a subsequent challenge thereto.

1 (b) Any challenge to a designation of Discovery Material under this Order shall  
2 be written, shall be served on Outside Counsel for the Producing Party, shall particularly  
3 identify the documents or information that the Receiving Party contends should be differently  
4 designated, and shall state the grounds for the objection. Thereafter, further protection of such  
5 material shall be resolved in accordance with the following procedures:

6 (i) The objecting Party shall have the burden of conferring either in  
7 person, in writing, or by telephone with the Producing Party claiming protection (as well as any  
8 other interested party) in a good faith effort to resolve the dispute. The Producing Party shall  
9 have the burden of justifying the disputed designation;

10 (ii) Failing agreement, the Receiving Party may bring a motion to the  
11 Court for a ruling that the Discovery Material in question is not entitled to the status and  
12 protection of the Producing Party's designation. The Parties' entry into this Order shall not  
13 preclude or prejudice either Party from arguing for or against any designation, establish any  
14 presumption that a particular designation is valid, or alter the burden of proof that would  
15 otherwise apply in a dispute over discovery or disclosure of information;

16 (iii) Notwithstanding any challenge to a designation, the Discovery  
17 Material in question shall continue to be treated as designated under this Order until one of the  
18 following occurs: (a) the Party who designated the Discovery Material in question withdraws  
19 such designation in writing; or (b) the Court rules that the Discovery Material in question is not  
20 entitled to the designation.

21 14. **SUBPOENAS OR COURT ORDERS**  
22

23 If at any time documents containing Protected Material are requested or subpoenaed by  
24 any court, arbitral, administrative or legislative body, or are otherwise requested in discovery,  
25 the Receiving Party shall immediately give written notice thereof to every party whose  
26 Protected Material has been requested and to its counsel and shall copy Plaintiff's counsel on

1 any such communication and shall provide each such party with an opportunity to object to the  
2 production of such documents. If a Producing Party does not take steps to prevent disclosure  
3 of such documents within ten business days of the date written notice is given, the party to  
4 whom the referenced subpoena or other request is directed may produce such documents, but  
5 shall take all reasonable measures to have such documents treated in accordance with terms of  
6 this Protective Order.

7  
8 **15. FILING PROTECTED MATERIAL**

9 (a) Absent written permission from the Producing Party or a Court Order  
10 secured after appropriate notice to all interested persons, a Receiving Party may not file or  
11 disclose in the public record any Protected Material.

12 (b) Any Party that wishes to file under seal with the Court any brief, document,  
13 or materials that are designated as Protected Material under this Order shall comply with  
14 Western District of Washington Local Rule 5(g) and the other Local Rules. However, nothing  
15 in this section shall in any way limit or detract from this Order's requirements as to Source  
16 Code.

17 **16. NO WAIVER OF PRIVILEGE**

18 (a) Nothing in this Protective Order shall require production of information that  
19 a party contends is protected from disclosure by the attorney-client privilege, the work product  
20 immunity or other privilege, doctrine, right, or immunity. Pursuant to Fed. R. Evid. 502(d), the  
21 production of a privileged or work-product-protected document is not a waiver of privilege or  
22 protection from discovery in the Case or in any other federal or state proceeding. For example,  
23 the mere production of privilege or work-product-protected documents in the Case as part of a  
24 mass production is not itself a waiver in the Case or any other federal or state proceeding. A  
25 producing party may assert privilege or protection over produced documents at any time by  
26

1 notifying the receiving party in writing of the assertion of privilege or protection. In addition,  
2 information that contains privileged matter or attorney work product shall be immediately  
3 returned if such information appears on its face to have been inadvertently produced or if notice  
4 is provided.

5 (b) Nothing herein shall prevent the Receiving Party from preparing a record  
6 for its own use containing the date, author, addresses, and topic of the returned Discovery  
7 Material and such other information as is reasonably necessary to identify the Discovery  
8 Material and describe its nature to the Court in any motion to compel production of the  
9 Discovery Material. Any motion to compel production of the returned Discovery Material shall  
10 be filed under seal and shall not assert as a ground for production the fact of the inadvertent or  
11 unintentional production, nor shall the motion disclose or otherwise use the content of the  
12 returned document or information in any way beyond that which is reasonably necessary to  
13 identify the Discovery Material and describe its nature to the Court.

14 17. **INADVERTENT FAILURE TO DESIGNATE PROPERLY**  
15

16 (a) The inadvertent failure by a Producing Party to designate Discovery  
17 Material as Protected Material with one of the designations provided for under this Order shall  
18 not waive any such designation provided that the Producing Party notifies all Receiving Parties  
19 that such Discovery Material is protected under one of the categories of this Order within  
20 fourteen days of the Producing Party learning of the inadvertent failure to designate. The  
21 Producing Party shall reproduce the Protected Material with the correct confidentiality  
22 designation within seven days upon its notification to the Receiving Parties. Upon receiving  
23 the Protected Material with the correct confidentiality designation, the Receiving Parties shall  
24 return or securely destroy, at the Producing Party's option, all Discovery Material that was not  
25 designated properly.

1 (b) A Receiving Party shall not be in breach of this Order for any use of such  
2 Discovery Material before the Receiving Party receives such notice that such Discovery  
3 Material is protected under one of the categories of this Order, unless an objectively reasonable  
4 person would have realized that the Discovery Material should have been appropriately  
5 designated with a confidentiality designation under this Order. Once a Receiving Party has  
6 received notification of the correct confidentiality designation for the Protected Material with  
7 the correct confidentiality designation, the Receiving Party shall treat such Discovery Material  
8 at the appropriately designated level pursuant to the terms of this Order.

9  
10 18. **INADVERTENT DISCLOSURE NOT AUTHORIZED BY ORDER**

11 (a) In the event of a disclosure of any Discovery Material pursuant to this Order  
12 to any person or persons not authorized to receive such disclosure under this Protective Order,  
13 the Party responsible for having made such disclosure, and each Party with knowledge thereof,  
14 shall immediately notify counsel for the Producing Party whose Discovery Material has been  
15 disclosed and provide to such counsel all known relevant information concerning the nature and  
16 circumstances of the disclosure. The responsible disclosing Party shall also promptly take all  
17 reasonable measures to retrieve the improperly disclosed Discovery Material and to ensure that  
18 no further or greater unauthorized disclosure and/or use thereof is made

19 (b) Unauthorized or inadvertent disclosure does not change the status of  
20 Discovery Material or waive the right to hold the disclosed document or information as  
21 Protected.

22 19. **FINAL DISPOSITION**

23 (a) Not later than ninety days after the Final Disposition of an individual case,  
24 the Parties to that case shall return all Discovery Material of a Producing Party to the respective  
25 Outside Counsel of the Producing Party or destroy such Material, at the option of the Producing  
26

1 Party. For purposes of this Order, “Final Disposition” occurs after an order, mandate, or  
 2 dismissal finally terminating all claims asserted against all Parties in an individual case,  
 3 including all appeals.

4 (b) All Parties that have received any such Discovery Material shall certify in  
 5 writing that all such materials have been returned to the respective Outside Counsel of the  
 6 Producing Party or destroyed. Notwithstanding the provisions for return of Discovery Material,  
 7 Outside Counsel may retain one set of pleadings, correspondence, and attorney and consultant  
 8 work product (but not document productions) for archival purposes, but must return or destroy  
 9 any pleadings, correspondence, and consultant work product that contain Source Code.

10 20. **DISCOVERY FROM EXPERTS OR CONSULTANTS**

11  
 12 (a) Drafts of reports of testifying experts, and reports and other written  
 13 materials, including drafts, of consulting experts, shall not be discoverable.

14 (b) Reports and materials exempt from discovery under the foregoing  
 15 paragraph shall be treated as attorney work product for the purposes of the Case and Protective  
 16 Order.

17 21. **MISCELLANEOUS**

18 (a) Non-Party Use of this Order. The parties shall disclose this Protective Order  
 19 to all non-parties producing information or material pursuant to a subpoena or Court order in  
 20 the Case. A non-party producing information or material voluntarily or pursuant to a subpoena  
 21 or a court order may designate such material or information under this Protective Order, and  
 22 shall be considered a Producing Party under this Protective Order. A non-party’s use of this  
 23 Protective Order to protect its confidential information does not entitle that non-party access to  
 24 Protected Material produced by any Party in the Case.



1 (b) Right to Further Relief. Nothing in this Order abridges the right of any  
2 person to seek its modification by the Court in the future. By stipulating to this Order, the  
3 Parties do not waive the right to argue that certain material may require additional or different  
4 confidentiality protections than those set forth herein.

5 (c) Termination of Matter and Retention of Jurisdiction. The Parties agree that  
6 the terms of this Protective Order shall survive and remain in effect after the Final  
7 Determination in the above-captioned matters. The Court shall retain jurisdiction after Final  
8 Determination in these matters to hear and resolve any disputes arising out of this Protective  
9 Order.

10 (d) Successors. This Order shall be binding upon the Parties hereto, their  
11 attorneys, and their successors, executors, personal representatives, administrators, heirs, legal  
12 representatives, assigns, subsidiaries, divisions, employees, agents, retained consultants and  
13 experts, and any persons or organizations over which they have direct control.

14 (e) Right to Assert Other Objections. By stipulating to the entry of this  
15 Protective Order, no Party waives any right it otherwise would have to object to disclosing or  
16 producing any information or item. Similarly, no Party waives any right to object on any ground  
17 to use in evidence of any of the material covered by this Protective Order. This Order shall not  
18 constitute a waiver of the right of any Party to claim in these related actions or otherwise that  
19 any Discovery Material, or any portion thereof, is privileged or otherwise non- discoverable, or  
20 is not admissible in evidence in these related actions or any other proceeding.

21 (f) Burdens of Proof. Notwithstanding anything to the contrary above, nothing  
22 in this Protective Order shall be construed to change the burdens of proof or legal standards  
23 applicable in disputes regarding whether particular Discovery Material is confidential, which  
24 level of confidentiality is appropriate, whether disclosure should be restricted, and if so, what  
25 restrictions should apply.

(g) Modification by Court. This Order is subject to further Court order based upon public policy or other considerations, and the Court may modify this Order *sua sponte* in the interests of justice. The United States District Court for the Western District of Washington is responsible for the interpretation and enforcement of this Order. All disputes concerning Protected Material, however designated, produced under the protection of this Order shall be resolved by the United States District Court for the Western District of Washington.

A proposed order is below.

DATED: May 7, 2020

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*Attorneys for Defendant HTC America, Inc.*

**ORDER**

It is so ORDERED.

SIGNED this 12<sup>th</sup> day of May, 2020.



RICARDO S. MARTINEZ  
CHIEF UNITED STATES DISTRICT JUDGE

**EXHIBIT A**

I acknowledge and declare that I have received a copy of the Protective Order (“Order”) in *Uniloc 2017 LLC v. HTC America, Inc.*, United States District Court, Western District of Washington, Civil Action No. 2:18-cv-01732-RSM. Having read and understood the terms of the Order, I agree to be bound by the terms of the Order and consent to the jurisdiction of said Court for the purpose of any proceeding to enforce the terms of the Order.

Names of individual: \_\_\_\_\_

Present occupation/job description: \_\_\_\_\_

Name of Company or Firm: \_\_\_\_\_

Address: \_\_\_\_\_

Dated: \_\_\_\_\_